

**CYNGOR SIR POWYS COUNTY COUNCIL**

**AUDIT COMMITTEE**

**29 SEPTEMBER 2020**

**REPORT AUTHOR: Ness Young**

**SUBJECT: SWAP report to consider the Council's process in relation to a one-off capital payment made to Theatr Brycheiniog in 2018**

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**REPORT FOR: DISCUSSION**

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**1. Purpose**

To provide a briefing for Audit Committee members on the SWAP report into the Council's process in relation to a one-off capital payment made to Theatr Brycheiniog in 2018.

To highlight the key issues from the report and suggest areas for the Committee's consideration.

**2. Background**

In November 2017 Theatr Brycheiniog asked the Council for a loan of £110,000. Following months of discussion and deliberations, due diligence suggested that granting a loan would represent high risk to the council and the council did not offer a loan. However, at a meeting on 16 August 2018 with the former Acting Chief Executive, the Leader of the Council, the Deputy Leader and Theatr Brycheiniog, it was suggested to the theatre that a one-off capital payment of £157,920 (excluding VAT) could be made to help address the theatre's significant financial difficulties, by funding repairs and maintenance costs associated with the building which is owned by the Council. On 28 August 2018 an urgent delegated decision report written by the then Chief Finance Officer (who was also the former Acting Deputy Chief Executive and Section 151 Officer) was published proposing that the Council make the one-off payment to Theatr Brycheiniog. An urgent portfolio holder's delegated decision to approve the payment was taken on 3 September 2018. Chairs of Scrutiny including the Audit Committee Chair were requested not to call in the decision. The Audit Chair was concerned about the lack of detail on the decision and after consulting with members of the committee who were equally

concerned it was agreed that the payment was made in two stages to allow the Audit Committee to consider the matter. On 12 September 2018, the Audit Committee expressed concern at the lack of background detail made available to support the urgent decision and a review was subsequently undertaken by the Chair and Vice Chair of the Audit Committee. This review culminated in the production of a report which was due to be considered by the Committee on 6 September 2019. However, the report was withdrawn before the meeting in favour of a fuller review being undertaken by SWAP Internal Audit Service. The Audit Committee agreed to defer consideration of the issue and asked SWAP to undertake a review.

The agreed objective of the SWAP review was to determine whether the Council applied effective governance in the decision-making process to grant the payment to Theatr Brycheiniog. The scope of the review considered the decision-making process, the decision, the payment and identified lessons to be learned.

### **3. Advice**

The SWAP report identifies some issues associated with the process undertaken by the Council in making the payment to the theatre. Specifically:

- i) While the process followed by the Council to award a one-off capital payment to Theatr Brycheiniog was in accordance with agreed constitutional rules there was a lack of a lack of documented evidence and audit trail to demonstrate an effective decision-making process.
- ii) Despite having a full repairing lease agreement with the theatre, two Council service areas have dealt with property management at the theatre over many years and the Council had paid for some repairs prior to the August 2018 payment. These actions have led to confusion regarding which organisation has responsibility for property repairs and maintenance.
- iii) The Council's constitutional framework allows the use of urgent decisions subject certain qualifying conditions. However, a requirement that an urgent decision report author and an urgent report approver must not be the same officer is not currently part of the framework which could lead to conflict of interests or perceptions thereof.
- iv) While the Council undertook and recorded effective due diligence activities in respect of the request from the theatre for a loan (which was not supported), there was no documented evidence apart from contact with the theatre's auditors that separate due diligence was undertaken in respect of the proposal to make a capital payment. SWAP acknowledges that the risk to the Council of a one-off capital payment was much less than for a loan as it would not be repayable, but the Council should have recorded that due diligence was undertaken and provided reasonable assurance that public funds would not be invested in an unsustainable organisation.

v) The need for an urgent decision was a result of delays in reaching a decision about whether to provide financial support to the theatre (between January – August 2018). Evidence submitted to SWAP showed that in August 2018 the need for funding became critical to ensure the continued use of the theatre building and to avoid breaching Arts Council grant conditions. SWAP concluded that earlier action by the Council would have allowed the normal call-in process to be utilised.

vi) SWAP concluded that the urgent delegated decision report written by the then Acting Chief Executive did not contain enough detailed information on the reason for the payment to justify making such a decision. Specifically it failed to: explain why a capital payment rather than loan was being proposed; the rationale for paying for property repairs when a full repairing lease was in place; how the payment would be compliant with Council policy; or to include an Equality Impact Assessment.

vii) The 28 August report recommended a review of the impact of the payment would be presented to the Portfolio Holder / Cabinet for information by the 31 March 2019, but SWAP found no documented evidence that this review was ever carried out.

viii) SWAP found no documented evidence of a clear view from the Audit Committee on the need to make the payment (discussed on 12 September 2018) so was unable to conclude whether the scrutiny made by the Committee was considered by portfolio holder before the final payment was made.

vix) The delegated decision report indicates the payment was based on of costs of maintaining the asset incurred by the theatre between 2014-17, but the amount actually paid was £1,166 (net of VAT) more than the audited figures. SWAP was unable to find evidence of the reason for this difference. Nor did they find evidence that due diligence had been undertaken by the Council to establish whether the theatre had received any funding from other sources to support its maintenance costs during the same period (it was established through the review that the Arts Council for Wales had given the theatre £30,000). Finally, SWAP found insufficient documented evidence to justify the whole payment as being eligible capital expenditure under the Code of Practice in Local Authority Accounting in the UK.

#### **Possible areas of questioning:**

- What action has the Council taken to improve record keeping across the organisation?
- How can the Audit Committee be assured that the Council has a “One Council” approach to asset management to avoid confusion between services and leaseholders?
- How can the Audit Committee be assured that the Council has effective due diligence processes and procedures in place given the SWAP findings regarding this payment?

- What action has the Council taken to improve the quality of report writing and options appraisals?